

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

RICKY MARTIN LUNA

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:11cv168DCB-JMR

VANCE LAUGHLIN, *et al.*

DEFENDANTS

REPORT AND RECOMMENDATION

This matter comes before the Court on motion of the Defendants Ashley Casey, Bryan Rabb, and Victor Orsolits, to dismiss [6] for insufficiency of service of process due to the failure of Plaintiff, Ricky Martin Luna, to comply with Federal Rule of Civil Procedure 4(m), as well as Plaintiff's failure to comply with the Court's Order [12] to Show Cause. Rule 4(m) provides in pertinent part that "if service of the summons and complaint is not made upon a defendant within 120 days after filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff shall dismiss the action without prejudice." *See Fed. R. Civ. P. 4(m).*

Plaintiff filed his Complaint [1] on November 28, 2011, naming Casey, Rabb and Orsolits as defendants. A motion to dismiss was filed on January 25, 2012, for insufficiency of service of process. (Ct. R., Doc. 6.) The Court entered an Order to Show Cause [12] on May 4, 2012, requiring the Plaintiff to show cause, no later than May 18, 2012, as to why this case should not be dismissed for failure to comply with Rule 4(m). The Court cautioned Plaintiff that his failure to timely comply with the Order would result in this cause being dismissed without prejudice and without further notice to Plaintiff. To date, Plaintiff has failed to respond to the Court's Order.

Under Rule 4(m), a district court is permitted to dismiss a case without prejudice if a

defendant has not been served within 120 days after a complaint is filed. *Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996). However, if a Plaintiff can show good cause for failing to serve a defendant, the court must allow additional time to effect service. *Id.* To date, the Plaintiff has failed to serve the Defendant with process, or respond to the May 4, 2012, Order [12] to Show Cause. Based on the foregoing, this Court is of the opinion that Plaintiff has failed to show good cause for failure to comply with Rule 4(m), and that this failure is indicative of a lack of interest in pursuing this cause against the named defendants, which delays the expeditious resolution of other cases. Furthermore, this Court is of the opinion that the Plaintiff has failed to show cause why this case should not be dismissed against Casey, Rabb and Orsolits, as ordered by this Court. Therefore, this Court recommends that the motion to dismiss this case [6] filed by Casey, Rabb and Orsolits be granted and that the case be dismissed without prejudice pursuant to Rule 4(m).

In accordance with the Rules of this Court, any party, within fourteen days after being served a copy of this recommendation, or by no later than June 12, 2012, may serve and file written objections to the recommendations, with a copy to the District Judge, the U.S. Magistrate Judge, and the opposing party. The District Judge at that time may accept, reject or modify in whole or in part, the recommendation of the Magistrate Judge, or may receive further evidence or recommit the matter to this Court with instructions. Failure to timely file written objections to proposed findings, conclusions, and recommendations contained in this report will bar an aggrieved party, except on the grounds of plain error, from attacking on appeal unobjected to proposed factual findings and legal conclusions accepted by the District Court. *Douglass v. United States Auto Ass'n*, 79 F.3d 1425 (5th Cir. 1996).

A copy of this order will be mailed to Luna at his last known address by certified mail, return receipt request.

THIS the 29th day of May, 2012.

s/ John M. Roper, Sr.

CHIEF UNITED STATES MAGISTRATE JUDGE